

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official capacity)
as Commissioner-In-Possession of Sentinel)
Trust Company and Receivership Management,)
Inc., Received of Sentinel Trust,)

Plaintiff,)

v.)

DANNY N. BATES, et al.,)

Defendants.)

No. 4980

FILED

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LINDA A. GOSSETT, CLERK & MASTER

BY: *Linda A. Gossett*

MEMORANDUM AND ORDER

The case is before the Court on "plaintiff's motion for summary judgment as to various claims against various defendants." The motion was argued on March 12, 2010, and taken under advisement. This case was filed May 17, 2005 by the plaintiffs, but the case was stayed for a considerable time pending resolution of the related criminal charges against the defendant Danny N. Bates.

This is a lawsuit by the Commissioner of Financial Institutions, who has possession of Sentinel Trust Co., a company that is in liquidation, and by the appointed receiver of Sentinel Trust Co., Receivership Management, Inc. The lawsuit has been filed against the former CEO of Sentinel Trust Co., Danny Bates; two former board members of Sentinel Trust Co., Clifton Todd Bates and

Gary O'Brien; Deanna June Bates (Mrs. Danny Bates); and Sentinel Service Corporation in an effort to collect/recoup monies that were allegedly converted and/or lost through mismanagement prior to the Commissioner seizing Sentinel Trust Co. in 2004. The suit also seeks to set aside certain alleged fraudulent transfers of real property from Mr. Danny Bates to his wife and others immediately before and after the seizure of Sentinel Trust Co. Sentinel Trust Co. was a state chartered trust company involved in the issuance and administration of municipal bonds.

The plaintiff specifically sets forth the judgments sought in its motion as follows:

- (a) granting judgment in favor of Plaintiffs as to the conversion claim against Danny Bates with award of \$2.175 million against him and vesting title to the 205 Bastin Road property in the name of the Commissioner-in-Possession;
- (b) granting judgment in favor of Plaintiffs as to the conversion claim against Deanna June Bates with award of \$1.6 million against her and vesting title to the 205 Bastin Road property in the name of the Commissioner-in-Possession;
- (c) granting judgment in favor of Plaintiffs as to the unjust enrichment claim against Deanna June Bates and vesting title to the 205 Bastin Road property in the name of Commissioner-in-Possession;
- (d) granting of judgment in favor of Plaintiffs as to the breach of fiduciary duties claim against Danny Bates with an award against him of \$2.175 million resulting from his criminal actions and \$4.395 million resulting from the deficiency in the Sentinel Trust pooled fiduciary account;
- (e) granting of judgment in favor of Plaintiffs as to the breach of fiduciary duties claim against Clifton Todd Bates and Gary O'Brien with a joint and several award against them of \$4.395 million resulting from the deficiency in the Sentinel Trust pooled fiduciary

account;

- (f) granting judgment in favor of Plaintiffs as to the claims of fraudulent conveyance of property against Danny Bates and Sentinel Services Corporation as to the properties identified herein and the vesting of title of those properties in the name of the Commissioner-in-Possession as well as other appropriate remedies pursuant to T.C.A. § 66-3-308;
- (g) entry of the order granting Plaintiff's Motion for Summary Judgment as a final order as to the matters so granted (Rule 54.02 Tenn. R. Civ. Pro.).

The case now before the Court is effected by two prior Court proceedings, both of which have significant impact on this lawsuit and this motion for summary judgment:

- (1) The demise of Sentinel Trust Co. is well set forth in the case of *In re Sentinel Trust Co.*, 206 S.W.3d 501 (Tenn. Ct. App. 2005). That case describes in detail the mismanagement of Sentinel Trust Co., the legal proceedings challenging the seizures of the company, and the early steps taken in the liquidation. The Court held that there was sufficient evidence to establish risk of losses to the company's depositors to warrant seizure and also that liquidation of the company was justified.
- (2) On May 1, 2009, Danny Bates was found guilty of two counts of theft of property over \$60,000.00 from Sentinel Trust Co. in the case *State of Tennessee v. Danny N. Bates*, Davidson County Criminal Court No. 2006-C-2246.¹ By Order dated June 26, 2009, Mr. Danny Bates was ordered to make restitution payments in the amount of \$600,000.00 to Commissioner Greg Gonzales as Commissioner-in-Possession of

¹ Theft of property over \$60,000.00 is a Class B Felony. Tenn. Code Ann. § 39-14-105(5).

Sentinel Trust Co.

None of the four defendants before the Court are represented by counsel, although all had a significant opportunity to employ counsel. Summary judgment law and the application of Tenn. R. Civ. P. 56 can be somewhat technical; however, its requirements are clearly set out in the Rule.

Judge (now Justice) Koch has stated the applicable law related to pro se litigants as follows:

We have consistently held that parties who decide to represent themselves are entitled to fair and equal treatment by the courts, *see, e.g., Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997), and that trial courts must take into account that many pro se litigants have no legal training and little familiarity with the judicial system, *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). That having been said, we must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Pro se litigants should not be permitted to shift the burden of litigating their cases to the courts or to their adversaries. Thus, trial courts should not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n. 4 (Tenn. Ct. App. 1995).

Wilkerson v. Ekelem, 2004 WL 578600, at *2 (Tenn. Ct. App. March 24, 2004).

The summary judgment motion was supported by a statement of undisputed facts and memorandum of law. The responses filed by the defendants did not comply with Tenn. R. Civ. P. 56. None filed responses to the statement of undisputed facts, and none even filed an affidavit in response except for Danny Bates, and his affidavit was late and contained many statements of facts refuted by his conviction and the facts found in *In re Sentinel Trust Co.*, *supra*.

In ruling on this motion, the Court is bound by Tenn. R. Civ. P. 56 and the concerns the Supreme Court expressed in *Hannan v. Alltel*, 270 S.W.3d 1 (Tenn. 2008) and *Martin v. Norfolk*

Southern, 271 S.W.3d 76 (Tenn. 2008) regarding the shifting burden and rules governing material evidence. Summary judgment remains a viable procedure when properly supported to weed out cases unsuitable for trial. *Hannan*, 270 S.W.3d at 10. The motion should not be granted, however, if there are any doubts concerning the existence of a material fact. *Martin*, 271 S.W.3d at 84.

Martin held, and a myriad of prior cases have also held:

If the moving party makes a properly supported motion, then the nonmoving party is required to produce evidence of specific facts establishing that genuine issues of material fact exist. *McCarley*, 960 S.W.2d at 588; *Byrd*, 847 S.W.2d at 215. The nonmoving party may satisfy its burden of production by:

(1) pointing to the evidence establishing material factual disputes that were overlooked or ignored by the moving party; (2) rehabilitating the evidence attacked by the moving party; (3) producing additional evidence establishing the existence of a genuine issue for trial; or (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civ. P. 56.06.

McCarley, 960 S.W.2d at 588; accord *Byrd*, 847 S.W.2d at 215 n.6. The nonmoving party's evidence must be accepted as true, and any doubts concerning the existence of a genuine issue of material fact shall be resolved in favor of the nonmoving party. *McCarley*, 960 S.W.2d at 588. "A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Byrd*, 847 S.W.2d at 215. A disputed fact presents a genuine issue if "a reasonable jury could legitimately resolve that fact in favor of one side or the other." *Id.*

Martin, 271 S.W.3d at 84. See also *Stanfill v. Mountain*, 301 S.W.3d 179, 184-185 (Tenn. 2009).

In reference to an analysis of material evidence, federal and state summary judgment law is consistent. *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993). While all reasonable inferences are to be drawn in favor of the non-moving party, it is also equally important that material evidence means more than speculation.

Progressing to the specific issue in this case, we are convinced that the inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits. If the defendant in a run-of-the-mill civil case moves for summary judgment or for a directed verdict based on the lack of proof of a material fact, the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict - "whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed." *Munson, supra*, 14 Wall., at 448.

Anderson v. Liberty Lobby, 477 U.S. 242, 252, 106 S.Ct. 2505, 2512 (1986).

Furthermore, in considering a summary judgment, the trial judge places great reliance on the statement of facts. Tenn. R. Civ. P. 56.03. The Court need not search the record but may rely exclusively on the statement of facts. *Owens v. Bristol Motor Speedway*, 77 S.W.3d 771, 774-775 (Tenn. Ct. App. 2001). The only facts appropriately considered are those which would be admissible at trial, and this would include hearsay excludable by TRE 802. *Coskerham v. Warren*, 958 S.W.2d 354, 355 (Tenn. Ct. App. 1997). In considering the facts stated by the parties in their statements, the Court has not considered the inadmissible hearsay or the legal conclusions stated as facts. Mere conclusory generalizations are inadequate to place a material fact in controversy. *Cawood v. Davis*, 680 S.W.2d 795, 796-797 (Tenn. Ct. App. 1984).

The obligation of a corporate officer or director not to convert or steal corporate property, money or other assets is self-evident. The fiduciary duty of a director is set forth at Tenn. Code Ann.

§§ 48-18-301 and 302. Danny Bates (already convicted of theft from the corporation), Clifton Todd Bates, and Gary O'Brien, as directors, could all be held responsible for breach of fiduciary duty.

Of course, directors are liable for breach of fiduciary duty, for conversion of property, and/or for actions taken in their own interest and not in the interest of the corporation. Tenn. Code Ann. §§ 48-18-301 and 302; *McRedmond v. Estate of Marianelli*, 46 S.W.3d 730, 738 (Tenn. Ct. App. 2000); *May v. National Bank of Commerce*, 387 F.Supp.2d 770, 778-781 (W.D. Tenn. 2004). Furthermore, a director is liable when he or she acts with a degree of negligence in carrying out his or her duties.

The directors of a corporation are bound to use due care and to be diligent in respect of the management and administration of the affairs of the corporation and in the use or preservation of its property and assets; for a breach or neglect of duty in such regard, they are liable for losses or injuries proximately resulting. The fact that the directors receive no compensation does not relieve them from the duty of exercising due care.

Directors are also bound to exercise ordinary skill and to act with reasonable intelligence. Directors are under a continuing obligation to keep informed about the activities of the corporation. Where the duty of knowing facts exists, ignorance due to negligence of duty on the part of a director creates the same liability as actual knowledge and a failure to act thereon.

18B Am.Jur.2d *Corporations* § 1468 (2004) (basis of liability for negligent or unauthorized acts).

Of course, the obligation described above is subject to the business judgment rule and issues of good faith reliance on authoritative information received by the board. *Id.* at §§ 1469-1472.

The movant also asserts that the conveyances of real property by Danny Bates just prior to and just after the seizure of Sentinel Trust are fraudulent transfers in violation of Tenn. Code Ann. §§ 66-3-305, 306 and 308. *See generally*, Brown, MacLean, and Ahern, *Tennessee Debtor-Creditor Law and Practice* § 22.01 *et seq.* (1998) (fraudulent conveyance).

The statutes state:

66-3-305. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, the debtor:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1), consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

66-3-306. Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a

creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

These statutes have been applied to transactions from husband to wife made to avoid creditors. *See, e.g., Lincoln County Band v. Maddox*, 114 S.W.2d 821, 828-829 (Tenn. Ct. App. 1937). Of course, intra-family transfers are one of the “badges of fraud.” *Tennessee Debtor-Creditor Law and Practice*, *supra*, at § 22.04, p. 380.

A. Danny Bates

The uncontroverted facts from plaintiff’s statement of undisputed facts show as follows:

(1) The Criminal Court of Davidson County has determined that Danny Bates has converted (theft of property) at least \$600,000.00 of Sentinel Trust Co. funds for his own use;

(2) The movant argues that the Court, based on the criminal court transcript, can find that Danny Bates converted \$2.175 million. The Court, however, cannot do this. The criminal court judgment for restitution is \$600,000.00. The Court further finds that the converted amounts are subsumed into the total loss from mismanagement of \$4.395 million;²

(3) That at the time of the Commissioner’s seizure of Sentinel Trust Co., there was at least a shortfall of \$4.395 million in the Sentinel Trust Co. accounts as a result of the mismanagement and

² This figure is the shortfall in fiduciary funds if all available funds were used to pay existing deficiencies. *See* affidavit of Jeanne Bryant, Exhibit 27 to summary judgment motion.

theft. There is no question “that Sentinel’s practice of funding defaulted bond expenses with funds from other non-related bond issues was ‘inappropriate’ and that such expenses were typically funded with corporate assets.” *In re Sentinel Trust Co., Id.* at 510-511. There is further no doubt as to Danny Bates’ control over the company. For example, Mr. Bates has testified, “Yes, I just said, because I was the sole director, the president and CEO, that I was dictator.”

This specific finding by the Court of Appeals is at the heart of this case.

Specifically, the record reflects that Sentinel used pooled fiduciary funds to provide operating capital for non-related, defaulted bond issues, thereby creating a fiduciary cash shortfall that greatly exceeded Sentinel’s current operating capital. Even Sentinel’s own counsel conceded that Sentinel’s practice of funding defaulted bond expenses with funds from other non-related bond issues was “inappropriate.” On April 30, 2004, Mr. Bates, by his own admission, stated that his calculations showed that Sentinel had a deficit fiduciary cash position of approximately \$7.25 million. The record reflects that, as early as the Department’s report for Sentinel’s year ending December 31, 1999, the trust company had failed to reconcile fiduciary cash and corporate accounts in an accurate fashion and to keep accurate books and records in accordance with industry standards and Department regulations. Additionally, Sentinel had failed to submit a capital plan outlining the company’s plans to replenish the fiduciary pooled account, and had failed to make an initial infusion of \$2 million in capital by the May 17 deadline, as required by the Emergency Cease and Desist Order filed on May 3, 2004.

In their arguments, Appellants never deny that the above conditions existed at the time the Commissioner took possession of Sentinel. Rather, Appellants admit that Sentinel’s practice of borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund the expenses of defaulted bond issues resulted in a significant deficiency in cash in the pooled fiduciary account. Moreover, Mr. Bates specifically admitted that he used the total cash held by the trust department (i.e. monies deposited in trust to be used for the purposes specified in the indenture) in a manner that was contrary to the indentures that governed Sentinel’s actions as trustee. By their own admission, prior to the Commissioner’s taking possession of Sentinel, Appellants were engaging in practices

that not only violated the Tennessee Banking Act, but also violated the FDIC's Statement of Principles of Trust Department Management, which Sentinel adopted as part of its corporate policies. Furthermore, these practices violated the indentures and contractual agreements between the bond issuers and Sentinel as fiduciary. From the record before us, we conclude that there is ample material evidence to indicate that Sentinel's business was being conducted in an unsound manner.

In re Sentinel Trust Co., 206 S.W.3d at 524-25; and

(4) The events from the Summer of 2003 leading up to the seizure of Sentinel Trust Co. in May 2004 are well documented. *In re Sentinel Trust Co.*, *Id.* at 509-512. This shows the Commissioner's increased attention to the mismanagement and/or perilous financial condition of Sentinel Trust Co. up to the seizure. While these events were unfolding, Mr. Bates engaged in a series of real estate transfers which are accurately set forth in the plaintiff's statement of undisputed facts as follows:³

10. [From 1994] until April 23, 2004, Danny Bates was 100% owner of the 205 Bastin Road property. There has never been any debt or mortgage on the 205 Bastin Road house.⁴

11. On April 23, 2004, Danny Bates quitclaimed his 100% interest in the debt-free 205 Bastin Road property (including the 205 Bastin Road house) to his wife, Deanne June Bates, for the recital sum of \$10.00.

12. Danny Bates knew that transferring the 205 Bastin Road house to his wife would limit his own net worth to basically his holdings of Sentinel Trust stock.

13. The April 23, 2004 transfer of the 205 Bastin Road house was approximately three (3) weeks before the Commissioner-in-Possession took possession of Sentinel Trust Company.

³ The Court has deleted references to the record.

⁴ The record reflects that at some point this property was valued at \$1.6 million.

15. . . Danny Bates knew, at the time of the April 23, 2004 quitclaim transfer of the 205 Bastin Road house to his wife, that there was, at least, an approximate \$5.7 million shortfall in the Sentinel Trust fiduciary account.

22. On July 9, 2004, Danny Bates quitclaimed to his wife, Deanna June Bates, for the recital sum of \$10.00, a 126.83 acre parcel of land as well as a 7.91 acre parcel of land, both of which were located in Lewis County, Tennessee.

23. On July 9, 2004, Danny Bates quitclaimed to his son, Clifton Todd Bates (and his son's wife), a 9.25 acre parcel of land in Lewis County, Tennessee for the recital amount of \$10.00.⁵

24. At the time of these transfers, Danny Bates knew that Sentinel Trust had a deficit fiduciary cash position of approximately \$7.25 million.

25. At the time of these transfers, Sentinel Trust had been taken over by the Commissioner-in-Possession and the Notice of Liquidation of Sentinel Trust (due to its insolvency) had been filed.

28. Sentinel Services Corporation is and has been an inactive corporation, wholly owned and controlled by defendant Danny Bates which never realized income or paid taxes and which was utilized to hold property otherwise belonging to Danny Bates, in "corporate" name. Danny Bates admits that there is not any difference between himself and Sentinel Services Corporation other than one is a "natural person" and the other is "an artificial creature of the State."

29. On October 12, 2004, Danny Bates, acting through Sentinel Services Corporation, quitclaimed, for the recital sum of \$10.00, all interest he held in a 47.55 acre parcel of land in Lewis and Hickman Counties to himself as trustee of an entity he established called the Bates Family Trust. On October 12, 2004, Danny Bates, acting

⁵ The wife is not a party so the Court cannot grant full relief for this transaction.

through Sentinel Services Corporation, quitclaimed, for the recital sum of \$10.00, all interest he held in a 127.99 acre parcel of land in Lewis County to himself as trustee of the Bates Family Trust.

30. Danny Bates has stated under oath that Sentinel Services Corporation never actually owned these properties, rather he did and that it was he, not Sentinel Services Corporation, that gave (without consideration) the properties to the Bates Family Trust.

31. The Bates Family Trust, as established and as described by Danny Bates, was, at the time of those October 2004 transfers, a revocable trust controlled by Danny Bates, who had the unfettered ability to move assets into and out of that "trust" and otherwise completely controlled the activities of the "trust."

32. At the time of the October 12, 2004 transfers, Danny Bates knew that the fiduciary accounts at Sentinel Trust had a shortfall of \$7.25 million.

Thus, while Sentinel Trust Co. was crumbling as the result of his theft and mismanagement, Mr. Danny Bates was transferring his real property out of the reach of his potential creditors and the receiver. The record also reflects that the demise of Sentinel and the transfer of this property left Danny Bates insolvent.

B. Deanna June Bates

The plaintiffs make a separate claim that Ms. Bates should be responsible in conversion and/or unjust enrichment. The Court finds these contentions to be untenable.

The record is simply not such, nor were the criminal court judgments such, that the Court can find that she exercised dominion and control over a house "undisputedly" built with money stolen from Sentinel Trust Co.

The Court also does not find the unjust enrichment claim to be supported. This claim is simply redundant to the fraudulent transfer set aside.

Ms. Bates, however, will be divested of the property she received by way of fraudulent transfers from her husband.

C. Clifton Todd Bates and Gary O'Brien

The movant's statement of undisputed facts related to Clifton Todd Bates and Gary O'Brien are sparse. It says they were directors, and they were directors during the time when Sentinel Trust Co. was borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund the expenses of defaulted issues, resulting in the significant deficiency in cash in the pooled fiduciary account.

The Court is of the opinion that the information cited above is simply insufficient for the granting of summary judgment. Under the requirement of *Hannan v. Alltell Publishing*, 270 S.W.3d 1 (Tenn. 2008), the movant would have to affirmatively show sufficient participation and/or available information to the board member to shift the burden to these two defendants. A business failure standing alone is insufficient to impose liability on a board member. See Tenn. Code Ann. §§ 48-18-301 and 302; 18B Am.Jur.2d *Corporations* §§1468-1472 (2004).

Here, the movant is somewhat the victim of its own assertion that Sentinel Trust Co. was controlled by Danny Bates and Danny Bates alone. While there is no doubt that Danny Bates' knowledge of the business is sufficient to find he violated his fiduciary duty (to include his conviction for theft), the same cannot be said for these two board members.

D. Final Judgment Issue

The movant has requested that this Court enter an Order as a final judgment as to the claims adjudicated on this motion. Tenn. R. Civ. P. 54.02. See also *Brown v. John Roebuck and Assoc.*,

2009 WL 4878621, at *4-8 (Tenn. Ct. App. Aug. 7, 2009).

The Court is tempted to grant this request as to Danny Bates but finds after careful analysis it cannot do so. Part of the claim against Danny Bates relates to the fraudulent transfer which also involves Deanna June Bates.

Ms. Bates has standing to assert her position in reference to the fraudulent transactions in which she was involved on appeal. Yet, not all claims against her were resolved. The Court has denied summary judgment as to certain claims against her, but these claims remain before the Court.

If the claims against Deanne June Bates, other than as recipient of fraudulent transfers, were non-suited or dismissed, the Court could make this a final order as to Danny Bates and Deanna June Bates. Otherwise, the Court cannot grant the movant's request. *See Brown, supra*.

E. ORDER

(1) The movant Lavender, Commissioner-in-Possession and Receivership Management is GRANTED a judgment against Danny N. Bates in the amount of \$4,395,000.00.

(2) The following real estate transactions/transfers from Danny R. Bates are hereby SET ASIDE and held for naught as fraudulent:

- (A) The transfer on April 23, 2004 of the 205 Bastin Road Property to Deanna June Bates;
- (B) The transfer on July 9, 2004 of 126.83 acres in Lewis County to Deanna June Bates;
- (C) The transfer on July 9, 2004 of 7.91 acres in Lewis County to Deanna June Bates;

- (D) The October 12, 2004 transfer from Sentinel Services Corporation of 47.55 acres in Lewis and Hickman Counties to himself as trustee of the Bates Family Trust; and
- (E) The October 12, 2004 transfer from Sentinel Services Corporation of 127.99 acres in Lewis County to himself as trustee of the Bates Family Trust.

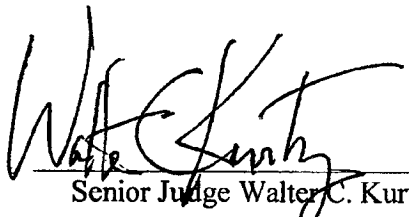
Mr. Matherne is to submit a proposed implementation order to the Court reflecting the ruling in E(2) above which contains the legal description of the property in question and reflects any pending liens. The proposed order should also reflect that the movant may levy execution on the real property that is the subject of E(2) above, pursuant to Tenn. Code Ann. § 66-3-308(b).

(3) The motion for summary judgment as to Deanna June Bates is DENIED except as to the judgment setting aside fraudulent real estate transfers to her.

(4) The motion for summary judgment as to Clifton Todd Bates and Gary O'Brien is DENIED.

(5) The Court declines to make this a Final Order.

This the 6th day of April, 2010,


Senior Judge Walter C. Kurtz

cc:

Janet Klienfelter, Senior Counsel, Special Litigation Division
Office of the Tennessee Attorney General
P.O. Box 20207
425 5th Avenue North
Nashville, Tennessee 37202-0207

Graham Matherne
2525 West End Avenue, Suite 1500
Nashville, Tennessee 37203

Jeanne Barnes Bryant
Receiver Management Inc.
783 Old Hickory Boulevard, Suite 255
Brentwood, Tennessee 37027

Danny and Deana Bates
Sentinel Services Corporation
205 Bastin Road
Hohenwald, Tennessee 38462

Clifton Bates
312 Bastin Road
Hohenwald, Tennessee 38462

Gary O'Brien
163 Shady Lane
Hohenwald, Tennessee 38462

Howard Cochran
3636 Mahlon Moore Road
Spring Hill, Tennessee 37174